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2009, No. 9

An Act to establish the Financial Services Development Authority as a statutory body and to set out its functions and powers

(26th June 2009)

BE IT ENACTED by the Parliament of the Cook Islands, in Session assembled, and by the authority of the same as follows:

Price \$4.50

1. Short title and commencement - (1) This Act may be cited as the Financial Services Development Act 2009.

(2) This Act shall come into force on the date it is assented to by the Queen's Representative.

(3) Notwithstanding subsection (2), and without limiting the application of section 12 of the Acts Interpretation Act 1924, upon the passing of this Act, the power to appoint the Board, Chief Executive Officer and other officers and employees of the Finance Industry Development Authority may be exercised for the purpose of bringing this Act into operation on the date of its coming into force.

2. Interpretation - In this Act, unless the context otherwise requires -

“Authority” means, the Financial Services Development Authority established by section 3;

“Board” means, the Board of directors established pursuant to section 4;

“Financial services industry” means the business carried on pursuant to the Trustee Companies Act 1981-82, the Banking Act 2003, the International Companies Act 1981-82, the International Trusts Act 1984, the International Partnership Act 1984, the Insurance Act 2008 and the Limited Liability Companies Act 2008;

“Financial year” means, a period of 12 months ending with the 30th June;

“Minister” means, the Minister of Finance;

“public servant” means those employees in the service of the Government of the Cook Islands and who are employed within those departments, agencies or other instrument as shall be prescribed under section 42(d) of the Public Service Act 1995-96;

“Trustee Companies Association” means the association representing those companies registered under the Trustee Companies Act 1981-82.

PART I
FINANCIAL SERVICES DEVELOPMENT AUTHORITY

3. Financial Services Development Authority - (1) There is established a statutory body, to be called the Financial Services Development Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall be capable of acquiring holding and disposing of real and personal property, of suing and being sued and of doing and suffering all such acts and things as bodies corporate may lawfully do and suffer.

(3) The seal shall be held in the custody of the Board and shall be used in such manner as the Board may resolve.

4. Directors - (1) There shall be a board of directors for the Authority which shall, subject to the provisions of this Act, be responsible for the direction and control of the Authority.

(2) The Board shall, subject to subsection (3), comprise, –

- (a) the Minister;
- (b) the Financial Secretary for the time being;
- (c) one person appointed by the Minister;
- (d) one person appointed by the Trustee Companies Association;
- (e) one person appointed by a majority of licensees holding for the time being either a licence issued under the Banking Act 2008 or a licence issued under the Insurance Act 2008;
- (f) the Commissioner of the Financial Supervisory Commission for the time being;
- (g) the Chief Executive Officer appointed under section 12.

(3) The persons appointed pursuant to subsection 2 (c), (d) and (e) shall have either, –

- (a) a relevant tertiary qualification and not less than 5 years professional work experience relevant to the financial services industry; or
- (b) not less than 7 years professional work experience relevant to the financial services industry;

whether that professional work experience be in the Cook Islands or elsewhere.

(4) The Minister shall be chairperson of the Board.

(5) A director, when acting in that capacity, shall not be personally liable in respect of any act or omission unless he or she acts in bad faith.

5. Term of office and remuneration of directors - (1) Except as provided in subsection (2), (3) and section 6, every director shall hold office for a term of three years but may from time to time be re-appointed.

(2) A director whose term of office has expired shall continue to hold office until that director's successor is appointed.

(3) Notwithstanding subsection (2), the Chief Executive Officer shall hold office as a director for as long as he holds office as the Chief Executive Officer.

(4) The directors shall be paid their remuneration out of the funds of the Authority as may be determined by resolution of the Board from time to time and approved by the Minister.

(5) Notwithstanding subsection (4), the Minister and the Chief Executive Officer and the Financial Secretary and the Commissioner of Financial Services and a director who is also a public servant, shall not be paid any remuneration for the performance of their functions and responsibilities as a director.

(6) Any proper expenditure incurred or to be incurred by a director in the performance of the directors functions and responsibilities shall, subject to a resolution of the Board, be reimbursed or paid (as the case may be) out of funds of the Authority.

6. Extraordinary vacancies - (1) A director may resign at any time by written notice to the Minister.

(2) A director may at any time be removed from office by the Minister for incompetence, disability, bankruptcy, neglect of duty or misconduct proved to the satisfaction of the Minister.

(3) If a director dies, resigns from office or is removed from office, the vacancy shall be deemed to be an extraordinary vacancy.

(4) A director appointed to fill an extraordinary vacancy shall hold office only for the unexpired portion of the term of office of that director's predecessor and thereafter in accordance with section 5(2), but may be re-appointed.

(5) The powers of the Board shall not be affected by an extraordinary vacancy in its membership.

7. Meetings of Board - (1) The first meeting of the Board shall be held on a day (being a date not later than 2 months following the coming into force of this Act) to be appointed by the Chairperson.

(2) Subsequent meetings shall be held at such times and places as the Board or the Chairperson may from time to time appoint.

(3) The Chairperson or any three directors may at any time by notice in writing to the other directors call a meeting of the Board.

(4) At all meetings a majority of directors who are for the time being members of the Board shall constitute a quorum.

(5) The Chairperson shall preside at all meetings at which he or she is present but otherwise, the directors present shall appoint one of them to be chairperson of that meeting.

(6) On each matter to be decided by the Board, a director (including the Chairperson) shall have only one vote.

(7) All matters arising at any meeting (including a meeting convened otherwise than by way of a meeting in person) and all resolutions required of the Board, shall be decided and passed by a majority of the votes of directors present at the meeting.

(8) It shall not be necessary for the directors to meet in person for there to be a valid meeting of the Board and the Board may be convened in such manner as the Chairperson or Board may determine to transact any business including by way of telephone conference and the circulation of resolutions for approval or otherwise by each director.

(9) Subject to the provisions of this Act and of any regulations made hereunder, the Board may regulate its procedure in such manner as it thinks fit.

8. Minutes of meetings - (1) The Board shall cause minutes to be kept in a book provided for the purpose, of all resolutions and proceedings of its meetings.

(2) The minutes shall be signed by the Chairperson at the next meeting subsequent to the passing thereof.

(3) A copy of the minutes of every meeting shall be furnished to every director.

9. Disclosure of conflicting interest - (1) A director who has a personal pecuniary interest in any matter before the Board or any committee thereof, shall as soon as possible after the relevant facts have come to his or her notice, disclose the nature of his or her interest at a meeting of the Board.

(2) A disclosure under this section shall be recorded in the minutes of the meeting of the Board and the director disclosing the interest shall not take part in any deliberation or vote upon any decision relating to the matter, but –

(a) shall be counted as present for the purpose of forming a quorum of the Board for any such deliberation or decision; and

(b) shall be deemed to be absent for the purposes of determining whether a majority has supported the decision.

(3) Notwithstanding subsection (2), a decision made by the Board at which a director has taken part in deliberation or in decision-making in breach of that subsection, shall be as valid as if the breach had not occurred.

(4) For the purposes of this section, “personal pecuniary interest” shall not include a general pecuniary interest in the financial services industry held in common with other members of the financial services industry.

(5) A director who knowingly fails to disclose a personal pecuniary interest in accordance with this section with the intention of deriving directly or indirectly such an interest is guilty –

- (a) of misconduct; and
- (b) of an offence and upon conviction shall be liable to a fine not exceeding \$20,000 and, in addition to such fine, any gains resulting from the commission of the offence shall be forfeit to the Crown.

(6) Where it is alleged that an offence has been committed under this section, the Board shall refer the allegation to the Commissioner of Police to take proceedings for the prosecution of the director concerned.

10. Board may refer matters for investigation - The Board may from time to time appoint one or more of its directors or any other person or persons having appropriate qualifications or experience to investigate and report to the Board on such matters as are referred to him, her or them by the Board, for the purpose of the proper exercise of the Board's powers or its primary objective, or its functions under this Act.

11. Delegation of powers of Board - (1) The Board may from time to time delegate to any directors, officers or employees of the Authority or other person any of the powers or functions of the Board, including the power of delegation conferred by this section.

(2) Subject to any general or special directions given or conditions imposed by the Board or person to whom any powers are delegated pursuant to this section, the person to whom any powers are so delegated may exercise those powers in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.

(3) Every person purporting to act pursuant to any delegation under this section shall be presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary.

(4) Any delegation under this section may be made to a specified person or to persons of a specified class, or may be made to the holder for the time being of a specified office or appointment, or to the holders of offices or appointments of a specified class.

(5) Any delegation under this section may be revoked at any time.

(6) The delegation of any power by the Board or by any person shall not prevent the exercise of that power by the Board or, as the case may require, by the person by whom the delegation is made.

(7) A person to whom a function responsibility or power is delegated under this section shall, when acting in accordance with the delegation, not be personally liable in respect of any act or omission unless that person acts in bad faith.

12. Chief Executive Officer and other employees - (1) The Board shall appoint a Chief Executive Officer for the Authority on terms and conditions to be determined by the Board, including but not limited to, -

- (a) duties and responsibilities;
- (b) performance criteria and targets;
- (c) salary and performance bonuses.

(2) The Chief Executive Officer shall be responsible to the Board for -

- (a) the proper and efficient day to day operation of the Authority;
- (b) the attainment by the Authority of its primary objective set out in section 14;
- (c) the performance by the Authority of its functions under section 15; and
- (d) the Authority's compliance with the provisions of this Act.

(3) The Chief Executive Officer may from time to time, within policy and financial guidelines established by the Board, -

- (a) appoint such other officers and employees of the Authority including acting or temporary or casual officers and employees, as are necessary to achieve the primary objectives and efficient performance of the functions and powers of the Authority;
- (b) acquire supplies; and
- (c) engage services.

(4) Subject to subsection (3), the Chief Executive Officer may pay to officers and employees of the Authority such salaries and allowances as the Chief Executive Officer thinks fit and may, subject to any contractual obligations, at any time remove any officer or employee from office or employment.

(5) The Chief Executive Officer and an employee of the Authority when acting in that capacity, shall not be personally liable in respect of any act or omission unless that person acts in bad faith.

13. Confidentiality - (1) Any director, officer, employee, or other person engaged or employed by the Authority who, -

- (a) except in the course of his duties or as may be required by law, directly or indirectly discloses; or
- (b) for personal gain uses,

any information (other than information that is already in the public domain) acquired in the course of such duties, commits an offence and shall be liable on conviction to a fine not exceeding \$20,000 and, in addition to such fine any gains by that person resulting from the commission of the offence shall be forfeit to the Crown.

(2) A person who receives information, knowing such information is provided contrary to subsection (1) and who uses or attempts to use that information for his, her or its gain, commits an offence and on conviction shall be liable –

- (a) if an individual, to a fine not exceeding \$20,000 and, in addition to such fine, any gains resulting from the commission of the offence shall be forfeit to the Crown;
- (b) if a company, the company, each director and responsible officer of the company, to a fine not exceeding \$20,000 and, in addition to such fine any gains by the company, resulting from the commission of the offence shall be forfeit to the Crown.

(3) It shall be a defence to a charge under subsection (2), if a director or responsible officer of a company shows that he or she had no knowledge that the information was provided to the company contrary to subsection (1) and that there was no reasonable means by which that knowledge could be obtained.

(4) Where it is alleged that an offence has been committed under this section, the Board shall refer the allegation to the Commissioner of Police to take proceedings for the prosecution of the person concerned.

PART II

PRIMARY OBJECTIVE, FUNCTIONS AND POWERS

14. Primary objective of Authority - The primary objective of the Authority shall be to encourage, promote and develop the Cook Islands financial services industry so as to achieve sustained growth, in a manner which is economically beneficial, socially responsible and reputable.

15. Functions of Authority - In the pursuit of its primary objective, the Authority shall –
- (a) prepare and implement a strategic business plan for the financial services industry to include long term strategic objectives and policy, proposed marketing initiatives, product development objectives and targeted results;
 - (b) keep the strategic business plan under continual review and updated having regard to developments, initiatives, current issues and market practice and awareness;
 - (c) provide advice and information to Government on any matter relating to the financial services industry including policy, developments, initiatives and industry issues;
 - (d) liaise and communicate with and between Government departments and agencies to assist Government in the coordination of a unified approach on industry issues;

- (e) foster and manage a single and proactive approach between Government and industry operators when dealing with industry issues;
- (f) represent Government and industry operators domestically and at regional and international organizations;
- (g) promote the long term development interests of the industry and market awareness by the coordination, production and dissemination of information, material, initiatives and products and the attendance at and hosting of marketing events;
- (h) liaise and interact with Government, industry operators and regulators on industry issues and initiatives.

16. Powers of the Authority - (1) The Authority shall have all the powers reasonably necessary for the effective performance of its primary objective and functions.

(2) Without limiting the generality of subsection (1), the Authority may –

- (a) act in combination or association with any person or body of persons whether in the Cook Islands or elsewhere, or any Government department or agency that may be engaged, concerned or interested in the Authority's primary objective and functions and contribute to the expenses involved in any such combination or association;
- (b) contract for execution or provision by any person of any goods or service on and subject to such terms and conditions as the Authority thinks fit;
- (c) enter into commercial contracts consistent with its functions;
- (d) engage consultants and advisers for the furtherance of its primary objective and its functions.

17. Government policy - (1) In the exercise of its functions and powers and in the preparation of its statement of corporate intent, the Authority shall have regard to any general policy directions of Cabinet conveyed by the Minister in writing and not inconsistent with the primary objective or the functions of the Authority.

(2) A copy of every written policy direction given by the Minister pursuant to subsection (1) shall be included in the next ensuing annual report of the Authority.

PART III
ACCOUNTABILITY

18. Funds of the Authority - The funds of the Authority shall comprise -
- (a) monies appropriated by Parliament for the purposes of the Corporation;
 - (b) money provided to the Authority by private sector interests;
 - (c) accumulations arising from monies referred to in paragraphs (a) and (b).
19. The Authority account - (1) All money provided to the Authority pursuant to section 18(b) shall, pending expenditure, be held by the Authority in trust in a separate trust account with a commercial bank approved by the Financial Secretary upon the recommendation of the Board and the keeping and expenditure thereof shall be separately shown and accounted for in the statement of corporate intent, and in the financial reports and fiscal updates.
- (2) For the purposes of section 46(3) of the Ministry of Finance and Economic Management Act 1995-96, the Authority shall be deemed to be appointed on behalf of the Crown to manage the monies referred to in subsection (1) consistent with the purposes for which it was provided and such monies shall not at any time become public monies or revert to the Crown.
- (3) No money shall be withdrawn from any bank account except by cheque or other instrument signed by such person or persons in such manner as the Board may from time to time determine.
20. Financial reporting and fiscal updates - The Board shall deliver to the Ministry of Finance and Economic Management, financial reports and fiscal updates in accordance with Parts II and V of the Ministry of Finance and Economic Management Act 1995-96, as if the Authority was a government department as defined in that Act.
21. Statement of corporate intent - (1) The Board will on behalf of the Authority deliver to the Minister not later than 1 month before the commencement of each financial year, a statement of corporate intent, the first statement to be delivered within 90 days of the date of this Act coming into force, or such longer period as the Minister may allow.
- (2) The statement of corporate intent shall each year contain Government's policy as it affects the Authority and in addition specify in respect of the next financial year, and insofar as is practicable, for each of the four immediately succeeding financial years, the following information -
- (a) the objectives of the Authority;
 - (b) the nature and scope of the activity to be undertaken;
 - (c) the performance targets and other measures by which the performance of the Authority may be judged in relation to its primary objective;

- (d) the financial resources required to achieve performance targets;
- (e) the costs, if any, to the Authority in recognising Government's policies in so far as those policies affect the financial services industry;
- (f) the accounting policies of the Authority;
- (g) such other matters as are agreed between the Minister and the Authority.

(3) The statement of corporate intent may from time to time be revised by agreement between the Board and the Minister.

(4) The statement of corporate intent and any revised statement of corporate intent agreed pursuant to subsection (3) of this section shall be made available to the public at the premises of the Financial Services Development Authority, by electronic means on the Authority's website or be provided electronically to the public on request, once it has been delivered to the Minister in accordance with sub-section (1).

22. Annual report - (1) Within 3 months after the end of each financial year the Board shall deliver to the Minister a report of the operations of the Authority during that financial year, including statements of -

- (a) financial position;
- (b) financial performance;
- (c) cash flows;
- (d) borrowings;
- (e) commitments;
- (f) specific fiscal risks;
- (g) accounting policies;
- (h) outputs and outcomes actually achieved,

together with such other statements as are consistent with generally accepted accounting practice.

(2) The annual report made under subsection (1) shall state the information necessary to enable an informed assessment of the operations of the Authority including a comparison of the performance of the Authority with the statement of corporate intent.

23. Office of the Public Expenditure Review Committee and Audit to be auditor of the Authority - (1) The Office of the Public Expenditure Review Committee and Audit shall be the auditor of the Authority, which office will have and may exercise the functions, duties and powers it has under the Public Expenditure Review Committee and Audit Act 1995-96.

(2) Without limiting subsection (1), the Board may with the agreement of the Office of Public Expenditure Review Committee and Audit, appoint a person or a firm to conduct audits of the Authority.

24. Protection from disclosure of sensitive information - Nothing in this Act shall be construed as requiring the inclusion in any report required under this Act, any information that could be properly withheld if it would otherwise damage the commercial interests of the Authority or any person engaged in the financial services industry, or is information that may be withheld under any Act in force concerning the disclosure of information.

PART IV
MISCELLANEOUS

25. Act binding on Crown - This Act shall bind the Crown.

26. Regulations - (1) The Queen's Representative may from time to time by Order in Executive Council promulgate such regulations as may be necessary or expedient for giving effect to the provisions of this Act and for the due administration thereof.

(2) All such regulations shall be laid before Parliament within fourteen days after the date of making thereof if Parliament is then in Session, and, Parliament is not then in Session, shall be laid before Parliament at the commencement of the next ensuing Session.

This Act is administered by the Financial Services Development Authority